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In the Supreme Court of the United States

JACK DUCKWORTH, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, ET AL., *Petitioners*,

v.

RICHARD A. FRENCH, ET AL., *Respondents*.

UNITED STATES OF AMERICA, *Petitioner*,

v.

RICHARD A. FRENCH, ET AL., *Respondents*.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF *AMICI CURIAE* OF WASHINGTON LEGAL FOUNDATION; UNITED STATES SENATOR SPENCER ABRAHAM; UNITED STATES REPRESENTATIVE TOM DeLAY; AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether the automatic stay provision of the Prison Litigation Reform Act, 18 U.S.C. § 3626(e), violates separation-of-powers principles by legislatively specifying a rule of decision or legislatively annulling a judgment.

2. Whether a district court has the authority to suspend the automatic stay under traditional equitable standards.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. THE PRISON LITIGATION REFORM ACT AND THE AUTOMATIC STAY 3

A. Congress Enacted the Prison Litigation Reform Act to Restore Control of State Prisons to the States 3

B. The Operation of the PLRA's Remedial Requirements 4

II. SECTION 3626(e) MUST BE READ ACCORDING TO ITS PLAIN MEANING 7

A. The Plain Language of the Automatic Stay Makes Clear That It Precludes any Equitable Discretion to Override the Stay 7

B. The Justice Department's Canons of Construction Do Not Justify Ignoring the Plain Language of the Automatic Stay 10

III. THE AUTOMATIC STAY DOES NOT VIOLATE THE SEPARATION OF POWERS 13

A. Separation of Powers Principles Do Not Prevent Congress From

Placing Legislative Limits on the Federal Courts' Equitable Powers 14

B. Nothing in This Court's Precedents Suggests that the Automatic Stay Provision Violates Separation of Powers Principles 16

C. Nothing in the Penumbra of Article III Suggests that the Automatic Stay Provision Violates the Separation of Powers 22

1. The Self-Executing Nature of the Automatic Stay Does Not Violate the Separation of Powers 23

2. Federal Law Features Other Self-Executing Provisions with Far More Demanding Time Limits 25

D. The Automatic Stay Does Not Violate the Separation of Powers Simply Because it Makes it More Difficult for Federal Courts to Supervise State and Local Prisons 29

CONCLUSION 30

TABLE OF AUTHORITIES

Page

Cases:

Aptheker v. Secretary of State, 378 U.S. 500 (1964) 11
BellSouth Corp. v. F.C.C., 162 F.3d 678 (D.C. Cir. 1998) 24
Califano v. Yamasaki, 442 U.S. 682 (1979) 12
California v. Grace Brethren Church, 457 U.S. 393 (1982) 15
Caminetti v. United States, 242 U.S. 470 (1917) 10
Celotex Corp. v. Oil, Chemical and Atomic Workers Int'l Union, 516 F.2d 242 (3d Cir. 1975) 26
Commodity Futures Trading Comm'n v. Schor, 478 U.S. 833 (1986) 11
Hadix v. Johnson, 144 F.3d 925 (6th Cir. 1998) 11
Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3d Cir. 1999) 16
In re Dist. No. 1-Pacific Coast Dist., Marine Engineers' Beneficial Ass'n, 723 F.2d 70 (D.C. Cir. 1983) 26
Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997) 19
Landgraf v. USI Film Prods., 511 U.S. 244 (1994) 18–19
Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938) 15
Missouri v. Jenkins, 515 U.S. 70 (1995) 16
Mistretta v. United States, 488 U.S. 361 (1989) 14–15
Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. 518 (1851) 17
Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. 421 (1855) ..... passim
Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995) ..... passim
Reno v. American-Arab Anti-Discrimination Committee, 119 S. Ct. 936 (1999) 15
Robertson v. Seattle Audubon Soc., 503 U.S. 429 (1992) 21

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 19
SBC Commun., Inc. v. F.C.C., 154 F.3d 226 (5th Cir. 1998) 24
System Federation No. 91, Ry. Empl. Dept. v. Wright, 364 U.S. 642 (1961) 19
Toledo, P. & W. R.R. v. Brotherhood of R.R. Trainmen, Enterprise Lodge No. 27, 132 F.2d 265 (7th Cir. 1942) 26
Turner v. Safley, 482 U.S. 78 (1987) 16
United States ex rel. Attorney General v. Delaware & Hudson Co., 213 U.S. 366 (1909) 11
United States v. Klein, 80 U.S. 128 (1871) ..... *passim*
United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989) 10
Walberg v. Israel, 766 F.2d 1071 (7th Cir.) 16

Constitutional Provisions, Statutes, and Rules:

18 U.S.C. § 3626(a)(1) 5, 7
18 U.S.C. § 3626(a)(2) 13
18 U.S.C. § 3626(b)(1) 5, 8
18 U.S.C. § 3626(b)(2) 5
18 U.S.C. § 3626(e) 5, 10
18 U.S.C. § 3626(e)(1) 6, 9
18 U.S.C. § 3626(e)(2) 6, 9
18 U.S.C. § 3626(e)(2)(A)(i) 12
18 U.S.C. § 3626(e)(3) 8
18 U.S.C. § 3626(e)(4) 6
28 U.S.C. § 455 15
29 U.S.C. § 107 25–26
Fed. R. Civ. P. 65(b) 25–26, 28
Pub. L . No. 96-458, 94 Stat. 2035 (1980) 15
Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) 20, 23
Pub. L. No. 104-134, § 802(b)(3), 110 Stat. 1321 (1996) 1
U.S. Constitution, Article I, § 8 cl. 9 15
U.S. Constitution, Article III ..... *passim*

Other Materials:

WARREN, THE SUPREME COURT IN UNITED STATES HISTORY (1926) 18
Prison Reform: Enhancing the Effectiveness of Incarceration: Hearing on S. 3, S. 38, S. 400, S. 866, S. 930, and H.R. 667 Before the Senate Judiciary Comm., 104th Cong. (July 27, 1995) 3–4
THE FEDERALIST (Jacob E. Cooke ed., 1961) 14

INTEREST OF *AMICI CURIAE*

The Washington Legal Foundation (WLF) is a nonprofit public interest law and policy center based in Washington, D.C., with supporters in all 50 States.[1] WLF regularly appears in legal proceedings before federal and state courts to defend and promote free enterprise and individual rights. WLF has appeared before this Court in cases involving prison litigation and the separation of powers *See, e.g., Lewis v. Casey*, 116 S. Ct. 2174 (1996); *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995).

The Congressional *amici* signing this brief include Members from both houses who are still in Congress and were leading sponsors of the relevant provisions of the Prison Litigation Reform Act or its predecessor legislation. They also include leading proponents of the 1997 amendments to that legislation.

The Allied Educational Foundation (AEF) is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* in this Court on several occasions.

Amici submit this brief in support of Petitioners and with the consent of all parties. Letters of consent have been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

In 1996 Congress enacted the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321, 1366-77 (1996). The PLRA established a comprehensive system governing prospective relief

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici curiae* and their counsel made a monetary contribution to the preparation and submission of this brief.

affecting prison conditions. Before a court may issue such an order, the PLRA requires it to find that a federal right has been violated and that the order is narrowly tailored to remedy that violation. To ensure that state and local prisons do not labor under orders that failed to meet these requirements, Congress included a number of procedural devices, including the automatic stay provision at issue here.

The automatic stay attempts to ensure that courts will measure decrees against the new, more demanding tests of the PLRA within 90 days of the filing of a motion to terminate. If the court does so, the automatic stay never comes into play. However, if the court takes longer than 90 days, the automatic stay lives up to its name—the court cannot extend the decree without making the findings required by the PLRA.

Despite the clear import of the automatic stay, the Justice Department urges this Court to accept a so-called saving construction. Under the Department's proposed construction, courts retain equitable discretion to continue a decree even after 90 days. This interpretation is at war with the plain text of the statute. Nonetheless, the Department suggests that the canons of construction that direct courts to avoid constitutional questions and restrictions on their equitable powers support its interpretation. But no canon licenses a court to rewrite a statute to deny a plain congressional intent to modify the courts' injunctive powers.

Perhaps the best reason to reject the Department's "saving construction" is that the automatic stay does not need saving. It is perfectly constitutional as written. Neither of the precedents relied on by the court below is to the contrary. While *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), forbids Congress from reopening final judgments at law, it

reaffirmed Congress' power to change the law prospectively to alter the force of existing injunctions. That is all the PLRA does. *Plaut* also clarified that *United States v. Klein*, 80 U.S. 128 (1871), is not implicated when Congress changes the underlying law. The PLRA not only changed the underlying law, but ensures that orders affecting state and local prisons reflect that change.

Nothing in the Constitution, this Court's precedents, or anything concealed in the penumbra of Article III casts doubt on the automatic stay. To the contrary, the automatic stay operates in the same fashion as other unquestioned provisions of federal law. None of this is to deny that the PLRA and the automatic stay make it less convenient for federal courts to issue injunctions governing state and local prisons. However, Congress determined that federal court supervision of state and local prisons raised tensions that justified these special procedures. Nothing in Article III or the separation of powers prevents Congress from making that judgment.

ARGUMENT

I. THE PRISON LITIGATION REFORM ACT AND THE AUTOMATIC STAY

A. Congress Enacted the Prison Litigation Reform Act to Restore Control of State Prisons to State Authorities

Congress enacted the PLRA to address a startling development. By October 1994, prison systems in 39 States, including 300 of the Nation's largest jails, operated under some form of federal court order. *See Prison Reform: Enhancing the Effectiveness of Incarceration: Hearing on S. 3, S. 38, S. 400, S. 866,*

S. 930, and H.R. 667 Before the Senate Judiciary Committee, 104th Cong. 84-85 (July 27, 1995).

Congress concluded that this extraordinary development violated precepts of federalism, separation of powers, and common sense. First, these federal orders govern state and local facilities whose function is to incarcerate criminals who have committed state and local crimes. Their operation lies at the heart of the States' police powers. Second, under our Constitution, the political branches decide how to administer prisons. Continuing judicial oversight of the details of prison administration takes judges far afield from their core Article III responsibilities. Finally, experience demonstrates that transferring management responsibility for state and local prisons to federal courts is not only constitutionally problematic; it is unwise. For example, in Philadelphia, a prison population cap imposed by one federal district judge led to the wholesale release of up to 600 criminal defendants a week who, in an 18-month period, committed nearly 10,000 new crimes. *Id.* at 46-53 (Testimony of Lynne Abraham).

Congress responded by enacting section 802 of the PLRA, Pub. L. No. 104-134, 110 Stat. 1321, 1366–68 (codified as 18 U.S.C. § 3626). Its sponsors sought to get federal courts out of the business of managing state and local prisons and to restore state and local control over these prisons, within the limits of federal law.

B. The Operation of the PLRA's Remedial Requirements

The PLRA establishes a comprehensive scheme governing prospective relief affecting prison conditions. It changes the law concerning the

prerequisites for granting prospective relief, the scope of permissible relief, the presumptive permissible duration of that relief, and the requirements for maintaining prospective relief beyond that presumptive time period. It also establishes new procedures to implement these requirements.

The PLRA changes the governing law for granting prospective relief affecting prison conditions. To grant such relief, a court must find that the relief is necessary to correct a violation of the federal rights of specific prisoners. 18 U.S.C. § 3626(a)(1). In addition, any relief granted must be narrowly tailored to correct the violation and give due regard to the public safety.

If a court initially grants prospective relief without making these findings, a party may move to terminate that relief immediately. *Id.* at § 3626(b)(2). The court must grant that motion unless it determines that the relief is necessary to correct a current and ongoing violation of federal law, is narrowly tailored to remedy that violation, and gives due regard to public safety. *Id.* at § 3626(b)(3).

In addition, to prevent an order supported by the requisite findings from turning into a permanent transfer of authority over prison operations to a federal court, the PLRA allows a party to move to end or modify prospective relief after two years. *Id.* at § 3626(b)(1). The court must grant that motion unless it makes the requisite findings—that the relief remains necessary to correct a current and ongoing violation of a federal right, is narrowly tailored, and gives due regard to the public safety. *Id.* at § 3626(b)(3).

The PLRA also establishes three new procedural rules governing these motions to terminate prospective relief. First, § 3626(e) requires that the court rule promptly on a motion to terminate. A 1997

amendment added an express provision that if the court does not do so, mandamus lies to compel a ruling. *Id.* at § 3626(e)(1).

Second, § 3626(e) includes the automatic stay provision at issue here. The automatic stay provides that if the court does not rule within 30 days on a motion to terminate authorized by §§ 3626(b)(1) or (2), the motion will operate as a stay of the decree beginning 30 days after the motion is filed. *Id.* at § 3626(e)(2). The 1997 amendments added a provision permitting a court to postpone the beginning date of this stay for no more than 60 days beyond the initial 30 days for good cause. *Id.* at § 3626(e)(3). The stay ends as soon as the court rules on the motion to terminate. *Id.* at § 3626(e)(2).

As its name suggests, the stay does not wipe out the underlying order. The district court retains the power to lift the stay and preserve the underlying order simply by ruling on the motion. *Id.* Indeed, if the automatic stay provision has its desired effect and the court rules promptly on the motion to terminate, then the stay never comes into effect.

Finally, § 3626(e)(4) contains a special provision governing the appealability of orders blocking the automatic stay. As recounted in the BRIEF OF *AMICI CURIAE* THE ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS AND THE CITY OF NEW YORK, shortly after the PLRA's enactment, several district courts enjoined the automatic stay from taking effect on the ground that it was unconstitutional, and the courts of appeals would not entertain appeals from these orders. To avoid any uncertainty, Congress amended the PLRA in 1997 to make such orders immediately appealable.

The PLRA also clarifies that preliminary injunctions and TROs remain available. *Id.* at § 3626(a)(2). To obtain one, a party need not prove

the "violation of a federal right," but rather, simply show "harm ... requir[ing] preliminary injunctive relief." *Id.* Under this section, preliminary injunctive relief should be narrowly tailored to remedy the harm and courts should give substantial weight to public safety and principles of comity. Finally, the PLRA provides that such a preliminary injunction automatically expires 90 days after entry, unless, within that time, the court makes the findings required for final prospective relief under § 3626(a)(1).

II. SECTION 3626(e) MUST BE READ ACCORDING TO ITS PLAIN MEANING

A. The Plain Language of the Automatic Stay Makes Clear That It Precludes any Equitable Discretion to Override the Stay

The automatic stay provision limits the equitable discretion of federal courts to maintain the effect of a prospective order without testing it against the substantive provisions of the PLRA. If a court does not rule on a motion to terminate an order within 90 days, the automatic stay provision makes clear that the court lacks any discretion to keep the order in effect. Remarkably, however, the Justice Department maintains that the automatic stay provision does no such thing. In the Department's view, "the text of the automatic stay provision does not deprive a court of authority to suspend the automatic stay when justified by traditional equitable standards. Instead, it simply describes how the statute is to operate in the absence of judicial intervention." U.S. Pet. at 13–14.

The Justice Department's proposed construction flies in the face of the statute's text. The full text of the automatic stay reads as follows:

> (2) Automatic stay. —Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period—
>
> (A)(1) beginning on the 30th day after [a motion filed under §§ 3626(b)(1) or (b)(2)] is filed; ... and
>
> (B) ending on the date the court enters a final order ruling on the motion.

There is nothing ambiguous about this provision. First, the text directs that *any* (b)(1) or (b)(2) motion *shall* (not "may") operate as a stay. It then establishes a specific beginning point for the stay—30 days after the filing of the motion (unless the court rules on the underlying motion by that time)—and a specific ending point—the date on which the court rules on the underlying motion. *Id.* On their face, these provisions leave no room for a freestanding judicial order "staying the stay."

If this were not enough, a separate provision specifies one, and only one, method for delaying the stay: The court may enter a one-time postponement of the stay's effective date for "not more than 60 days" upon a showing of good cause. § 3626(e)(3). If Congress had meant to add the phrase "or for such longer period as the court deems necessary," it would have. But it did not.[2]

[2] The Justice Department's contention that the automatic stay provision "simply describes how the statute is to operate in the absence of judicial intervention," U.S. Pet. at 13–14, relies on the premise that the statute does not address what happens in the case (continued...)

Indeed, it is unthinkable that Congress would have added that language, because it would undermine the whole point of the automatic stay. It is likewise unthinkable that Congress would have given federal courts equitable discretion without specifying the standard to be applied, as the PLRA does everywhere else it authorizes courts to enter injunctive relief. Nonetheless, the Justice Department asks this Court to accept both of these unthinkable propositions.

Every other provision of subsection 3626(e) reinforces the plain meaning of the automatic stay. First, as a matter of context, Congress begins this subsection with a provision, § 3626(e)(1), that straightforwardly expresses its intent to end unnecessary federal supervision of state prisons and to do so *quickly*: "The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion."

In addition, in adding subsection (e)(4), Congress responded to decisions blocking the automatic stay as unconstitutional. Congress made clear that such orders were appealable "regardless of how the order is styled or whether the order is termed a preliminary or a final ruling." This provision reflects Congress' overriding interest in ensuring that courts promptly implement the terms of the PLRA—including the time limits of the automatic stay. The provision is inconsistent with the Department's contention that

[2] (...continued)
of judicial intervention, so courts can fill in the gap with their equitable discretion. But that is wrong. The statute expressly addresses what happens in the case of judicial intervention—the stay can be extended one time for not more than sixty days upon a showing of good cause.

those time limits are mere default rules applicable only in the absence of "judicial intervention."

As with all disputes over statutory interpretation, the inquiry here correctly "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (citation omitted). "In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Id.* (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). The Justice Department's construction must be rejected because it is at war with the statutory text.

B. The Justice Department's Canons of Construction Do Not Justify Ignoring the Plain Language of the Automatic Stay

Presumably recognizing the weakness of its proposed interpretation, the Justice Department falls back on two canons of construction. First, the Department justifies its rather remarkable interpretation of § 3626(e) based on "the principle that a statute should be construed to avoid a serious constitutional question, when such a construction is fairly possible." U.S. Pet. at 17. The Department argues that the Court should employ this principle to avoid a "serious separation-of-powers question," because, in its view, "the automatic stay can be fairly interpreted to permit a court to suspend the automatic stay in accordance with traditional equitable standards." *Id.* at 18 (footnote omitted).

We entirely disagree. The Justice Department would convert a provision designed to ensure prompt judicial consideration of motions to terminate into a provision further empowering courts to continue

existing orders indefinitely. The only thing automatically stayed under the Department's interpretation is Congress' intent.

To be sure, this Court avoids constitutional questions when it fairly can. "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909). However, even this venerable principle has its limits. "'Although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute . . .' or judicially rewriting it." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 841 (1986) (quoting *Aptheker v. Secretary of State*, 378 U.S. 500, 515 (1964)).

The Department's interpretation reads the automatic stay out of the statute and turns § 3626(e) into "a blank sheet of paper." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995). Under its proffered construction, district courts would be bound by *no* fixed deadline in considering a motion for termination or modification of prospective relief, so long as they "judicially intervened." Although the Department's position was accepted by the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925 (6th Cir. 1998), Judge Easterbrook's dismissal of it is as accurate as it is concise: "Congress set a deadline; *Hadix* turns it into mush." U.S. Pet. App. at 23a (Easterbrook, J., dissenting). Rules of constitutional avoidance do not permit courts to turn statutes into "mush."

The Department fares no better with its fallback rule of construction. It invokes a separate canon of

construction, which suggests that "'[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction.'" *Id.* at 13 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979)). The problem with this argument is that Congress expressed its intent in clear and unequivocal words. The whole point of the PLRA, in general, and the automatic stay provision, in particular, is to rein in the equitable power of the federal courts in an area of traditional state concern. A canon designed to avoid unintentional displacement of equitable authority has no place in interpreting this statute. Applying this canon to the PLRA and the automatic stay would be worse than unnuanced; it would flout the will of Congress.

Perhaps the most startling feature of the Justice Department's proposed "saving" construction is that it ignores other aspects of the PLRA that ameliorate any perceived constitutional difficulty with the automatic stay. Nothing in the automatic stay prevents a district court from entering a new preliminary injunction to prevent irreparable injury caused by a stay of the preexisting decree. The PLRA does limit all preliminary injunctions affecting prison conditions to 90 days. Nonetheless, this residual authority to issue preliminary injunctions allows a court to preserve the essence of an existing decree for up to 180 days following the filing of a motion for termination or modification.[3]

[3] Section 3626(e)(2)(A)(i), in effect, gives the court 30 days. Subsection (e)(3) allows the court to postpone the automatic stay for an additional 60 days on a showing of good cause for any reason other than "general congestion of the court's calendar." And subsection (a)(2) allows the court to enter a preliminary injunction, which is effective for an additional 90 days, bringing the total to 180 days from the date a motion for termination or modification (continued...)

In light of the variety of deadlines under which federal officials regularly operate, 180 days surely constitutes a reasonable period in which to issue findings regarding a motion for termination or modification, even in the large and complex cases that typify prison reform litigation. *See* U.S. Pet. App. at 29a–30a (Easterbrook, J., dissenting). However, unlike the Justice Department's construction, this understanding of the PLRA furthers Congress' objective of ensuring that prospective injunctive relief is issued only pursuant to the standards of the PLRA. Unlike the loose equitable standard preferred by the Department, *see* U.S. Pet. at 12, the PLRA explicitly ensures that a court will grant a preliminary injunction only when it can make the findings required by the PLRA. § 3626(a)(2). These constraints ensure that a court has tools available to avoid injustice without evading the PLRA.[4]

III. THE AUTOMATIC STAY DOES NOT VIOLATE THE SEPARATION OF POWERS

The plain text of the automatic stay provision requires federal courts to test the validity of

[3] (...continued)
is filed.

[4] An example may illustrate the key difference between the Department's construction of the statute and its operation as written. Suppose a long-standing consent decree has two provisions, one narrowly tailored to remedy an ongoing constitutional violation and the other guaranteeing a hot pot in every cell. If the existing decree is subject to the automatic stay, a prisoner would have little difficulty obtaining a preliminary injunction addressing the ongoing constitutional violation, but not one continuing the hot pot guarantee. This result complies with the intent underlying the PLRA. By contrast, applying general equitable principles, a court might well override the automatic stay and continue the consent decree without differentiating between the two provisions.

injunctive relief affecting prison conditions against the substantive law of the PLRA. As demonstrated, the Justice Department's proposed construction eviscerates the statute's plain meaning and should be rejected on that basis alone. However, this Court also should reject the Department's "saving" construction for the simple reason that the automatic stay does not need saving. The automatic stay involves a straightforward exercise of Congress' undoubted authority to legislate prospectively even though existing prospective decrees may be overturned as a result. Far from violating the separation of powers, the automatic stay promotes both the separation of powers and federalism by ensuring that federal courts oversee state and local prisons only where necessary.

A. Separation of Powers Principles Do Not Prevent Congress From Placing Legislative Limits on the Federal Courts' Equitable Powers

The "separation of powers" provides a useful shorthand for the variety of constitutional principles and legal doctrines that address the division of power among the three branches of the federal government. However, the "separation of powers" is not a complete description of the system created by the founders. James Madison rejected the notion that the three "departments ought to have no partial agency in, or no controul over the acts of each other." THE FEDERALIST No. 47 at 325-26 (Jacob E. Cooke ed., 1961). As this Court has observed, the genius of the government the founders designed "lies not in a hermetic division among the branches, but in a carefully crafted system of checked and balanced power within each branch." *Mistretta v. United States*,

488 U.S. 361, 381 (1989). The events of last year, during which the Chief Justice presided over the Senate sitting as a court in the impeachment trial of the President prosecuted by managers from the House of Representatives, illustrates the truth of this observation.

While the Constitution prevents one branch from exercising power that belongs to another, it does not prevent a branch from exercising its authority in a way that affects the other branches. Article I authorizes Congress to "constitute tribunals inferior to the Supreme Court." Art. I, § 8 cl. 9. Congress can hardly exercise that authority without having a profound impact on the courts. Moreover, the Constitution vests Congress with the power to "make all laws necessary and proper for carrying into execution" not only its own enumerated powers, but also "all other powers vested by this Constitution in the government of the United States, or in any Department or Officer thereof." Art. I, § 8 cl. 18. Accordingly, Congress unquestionably can, and frequently does, exercise power over Article III courts not only by setting or changing the substantive law, but also by imposing procedural rules and jurisdictional limits, and even by prescribing standards of discipline and disqualification for Article III judges.[5] All these interactions between Congress and

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[5] *See, e.g., Reno v. American-Arab Anti-Discrimination Committee*, 119 S. Ct. 936, 945-47 (1999); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938) ("There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."); *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982); Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, P.L. 96-458, 94 Stat. 2035 (1980) (codified in various sections of Title 28 U.S.C.). Congress' authority to require disqualification of Article III judges for the mere appearance of bias, *see* 28 U.S.C. § 455, is undoubted, even though (continued...)

the courts are a manifestation, not a violation, of the Constitution's system of separation of powers.

Accordingly, there is nothing inherently suspect about the PLRA or the automatic stay. To be sure, the PLRA changes the law prospectively and accordingly alters the prospective effect of existing orders, like the one at issue here. It further requires courts to revisit injunctions periodically to prevent state and local prisons from laboring under orders that do not comply with the PLRA. The automatic stay provision, moreover, helps to ensure that courts consider the continuing validity of such orders promptly. However, all this is perfectly consistent with the constitutional structure designed by the founders. Indeed, by helping extract the courts from the business of unnecessarily managing prisons—"'a task that has been committed to the responsibility of [the legislative and executive] branches'"—the PLRA "is not merely consistent with separation-of-powers principles; it furthers those principles." *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178, 185 (3d Cir. 1999) (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)); *see also Missouri v. Jenkins*, 515 U.S. 70, 134-35 (1995) (Thomas, J., concurring).

B. Nothing in This Court's Precedents Suggests that the PLRA's Automatic Stay Provision Violates Separation of Powers Principles

The automatic stay provision fully complies with this Court's precedents. This Court addressed the limits of Congress' power to legislate concerning final

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[5] (...continued)
the Constitution requires disqualification only for actual bias, *see, e.g., Walberg v. Israel*, 766 F.2d 1071, 1076-77 (7th Cir.), *cert. denied*, 474 U.S. 1013 (1985).

judgments and pending litigation in *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), and *United States v. Klein*, 80 U.S. 128 (1871). The automatic stay provision avoids running afoul of the principles this Court laid down in *Plaut* and *Klein*.

The automatic stay provision does not implicate *Plaut* for the straightforward reason that the automatic stay does not attempt to overturn any final judgment at law, but rather places temporary limits on prospective relief. *Plaut* places final judgments beyond congressional control, but does not limit Congress' power to alter the prospective effect of injunctive relief. *Plaut* explicitly recognized this distinction, finding that congressional efforts to limit injunctive relief and cases upholding those congressional actions, such as *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. 421 (1855), "distinguish themselves." 514 U.S. at 232. The Court emphasized that "nothing in our holding today calls them into question." *Id.*

A contrary view—one that would impose limits on Congress' ability to affect prospective relief—would require overruling this Court's decision in *Wheeling Bridge*, not to mention invalidating key provisions of the Telecommunications Act of 1996. *Wheeling Bridge* rejected a challenge to an Act of Congress that negated an injunction entered by this Court in an earlier phase of the litigation. In its first *Wheeling Bridge* case, this Court declared the bridge over the Ohio River between Wheeling and Zane's Island to be an obstruction, and ordered the bridge to be elevated or removed. *See* 54 U.S. 518 (1851). In response, Congress enacted a statute declaring the bridge to be a lawful construction in its existing elevation. Despite Pennsylvania's argument "that the act of congress cannot have the effect and operation to annul the judgment of the court already

rendered," 59 U.S. at 431, the Court upheld the statute. The Court expressly distinguished the case of a final judgment in an action for damages. *Id.* As to prospective relief, however, the Court held that: "If, in the mean time, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced." 59 U.S. at 431-32.[6]

The distinction recognized in *Plaut* and *Wheeling Bridge* between laws seeking to alter final judgments at law and laws seeking to alter prospective injunctive relief is neither formalistic nor arbitrary. The distinction reflects the Article III concerns that animated this Court's decision in *Plaut*, and is firmly rooted in the primarily prospective nature of legislative power and the primarily retrospective nature of judicial power. *See, e.g., Landgraf v. USI*

[6] Nor can *Wheeling Bridge* be dismissed as an obscure case without broad implications for the separation of powers. The case generated substantial interest at the time as both a conflict between Congress and the courts and as part of the federal government's struggle to assert its authority over interstate commerce. *See* 2 WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 233-36 (1926). One journal at the time captured the importance of the issues in the original case, which led to the Court's order that the obstruction be removed: "Few cases ever excited greater interest or seemed to affect more extensively the internal commerce of the country than this celebrated controversy." Western L. J., IX (Sept. 1852), quoted in 2 WARREN, at 235. Another paper explained the controversy over Congress' reinstatement of the bridge: "This is the first instance in the whole history of the Government where Congress ever interposed or attempted to arrest a decree of the Supreme Court." New York Tribune (Feb. 19, 1856), quoted in 2 WARREN, at 236. That paper initially warned that "[t]he precedent may lead hereafter to serious embarrassments between the judicial and legislative departments," *id.*, but later conceded that the question had been settled "in conformity with the progressive spirit of the times." New York Tribune (April 23, 1856), quoted in 2 WARREN, at 236.

Film Prods., 511 U.S. 244, 265-67 (1994). A final judgment at law (such as an award of damages) reflects the court's determination of the law and facts at a specific point in time. As the Court held in *Plaut*, a legislative decision that notwithstanding that judgment, the court should now reopen the case, cannot be understood as anything other than a legislative determination that the court was wrong as to the law or the facts at the specific time of the decision. *See Plaut*, 514 U.S. at 227-28. That amounts to a congressional effort either to exercise judicial review or to impose a different judgment, both of which clearly usurp the judicial power to decide cases.

That is not so where Congress seeks to have a different law applied to decide the future scope and duration of an injunction. To be justified, continuing injunctive relief requires the court to be correct as to the law and facts not just at the time of the initial judgment but at all future points in time. *See, e.g., Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 656-57 (1st Cir. 1997) ("The legitimacy of prospective equitable relief rests upon the presumed persistence of the conditions that originally justified the relief."), *cert. denied*, 118 S. Ct. 2366, *reh'g denied*, 119 S. Ct. 14 (1998).[7] No court ever purports to make a final determination as to the future state of the law and facts. Accordingly, Congress does not question the

[7] *See also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992) ("A consent decree must of course be modified if, as it later turns out, one or more of the obligations [it imposes] has become impermissible under federal law."); *System Federation No. 91, Ry. Empl. Dept. v. Wright*, 364 U.S. 642, 647 (1961) ("There is also no dispute but that a sound judicial discretion may call for modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen."); *id.* at 652 ("The parties have no power to require of the court continuing enforcement of rights the statute no longer gives.").

initial determination of law and facts (let alone violate any principle of separation of powers) by changing the law and thereby altering the prospective effect of an injunction.

Wheeling Bridge applied this logic and held that even though the legislation at issue targeted and overturned a single injunction, Congress did not intrude on the courts' Article III powers. *Plaut* reaffirmed that even such a narrowly targeted law is constitutionally valid.

In sum, the Court in *Wheeling Bridge* upheld an Act of Congress that displaced an injunction issued by this Court, even though the legislation addressed that bridge and only that bridge. The automatic stay provision, by contrast, does not single out one existing decree and does not overturn any decree, but rather imposes temporary limits on prospective relief. Invalidating the automatic stay provision would require overruling *Wheeling Bridge*. Indeed, such a ruling also would doom the provisions of the Telecommunications Act of 1996 that expressly terminated the prospective effect of the AT&T, GTE and McCaw injunctions.[8] However, there is no need to overrule *Wheeling Bridge* or cast doubt on the Telecommunications Act. This Court's precedents make clear that Congress does not run afoul of the separation of powers by changing the law and altering the prospective effect of injunctive relief.

No aspect of the automatic stay provision runs afoul of this Court's decision in *United States v. Klein*,

[8] *See* Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) ("Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T [or GTE or McCaw] Consent Decree[s] shall, on and after such date, be subject to the restrictions and obligations imposed [by the 1996 Act] and shall not be subject to the restrictions and the obligations imposed by such Consent Decree[s].").

80 U.S. 128 (1871). Although there has been some doubt as to the exact contours of the holding in *Klein*, that issue need not trouble the Court here. As this Court explained in *Plaut*: "Whatever the precise scope of *Klein*, however, later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" 514 U.S. at 218 (quoting *Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 441 (1992)). *Klein* poses no obstacle here because the PLRA clearly "amends applicable law." Indeed, the *raison d'etre* of the automatic stay is to ensure that decrees affecting prison conditions—including pre-existing decrees—reflect the changes in the law that the PLRA worked. It is no coincidence that the Seventh Circuit's analysis discovering a *Klein* problem, *see* U.S. Pet. App. at 20a, omitted any reference to this critical passage from *Plaut*.

This passage underscores the critical but narrow limitation *Klein* places on Congress. The statute at issue in *Klein* reflected Congress' concern that the President was abusing the pardon power by granting clemency and restoring property to individuals who had provided material aid to the Confederacy. Congress lacked any power to place direct legislative limits on the President's exercise of the pardon. Accordingly, Congress attempted to achieve its goal indirectly by barring the introduction of the fact of pardons in litigation concerning property rights. The Court had little difficulty invalidating this congressional attempt to circumvent limitations on its ability to address the pardon power through legislation. The Court would not permit Congress to provide the rule of decision (by limiting the introduction of critical evidence) where Congress could not provide the rule of law through legislation. But nothing in *Klein* purports to limit Congress' ability to affect pending cases where Congress has the

authority to, and does in fact, change the law. Indeed, *Klein* distinguished *Wheeling Bridge* on this very ground. *See* 80 U.S. at 146–47. That is what this Court recognized in *Plaut* and that is all that the PLRA and the automatic stay accomplish.

The automatic stay provision is clearly constitutional under these principles. The automatic stay affects only the prospective effect of injunctions, and so falls clearly on the constitutional side of the *Plaut-Wheeling Bridge* divide. Moreover, the PLRA clearly changed the underlying law concerning the entry of injunctive relief affecting prison conditions, rendering *Klein* inapposite.

C. Nothing in the Penumbra of Article III Suggests that the Automatic Stay Provision Violates the Separation of Powers

The automatic stay provision complies with this Court's precedents. Nonetheless, the court below found that the automatic stay violated principles never articulated by this Court. This Court should reject this effort to impose restrictions on Congress not required by the Constitution and its system of separation of powers.

In particular, the court below found the automatic stay unconstitutional because it amounted to "a self-executing legislative determination that a specific decree of a federal court ... must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place." U.S. Pet. App. at 19a. This principle has no support in the Constitution or this Court's cases. Indeed, if the "self-executing" nature of the stay dooms it, then other commonly-accepted provisions of federal law are doomed as well.

1. *The Self-Executing Nature of the Automatic Stay Does Not Violate the Separation of Powers*

The self-executing character of the automatic stay does not transform it from a permissible regulation of procedure into a forbidden legislative suspension of a judgment. *Plaut* and *Wheeling Bridge* make clear that Congress does not violate the separation of powers by changing the law with the intent and effect of altering the validity of prospective relief. Congress can hardly run afoul of such principles if it connects the dots and makes the relationship between the change in the law and the effect on injunctions clear. That is all Congress did here. Congress changed the law, acknowledged that the change would affect pending injunctions, established procedures to ensure timely resolution of the continuing validity of prospective relief entered under the prior law, and set time lines limiting the effectiveness of decrees not reassessed under the new law. By making explicit that the change in the law affects pending injunctions and giving courts an opportunity to keep them in effect if they are justified under the new legal standard, Congress does not somehow transform normal prospective legislation into a separation of powers violation.[9]

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[9] Congress' termination of the prospective effect of the consent decrees then in effect against AT&T, GTE, and McCaw even more explicitly foreclosed the possibility that the decrees could have continuing effect. *See* Pub. L. No. 104-104, Tit. VI, § 601(a), 110 Stat. 143 (1996) ("Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [decrees] shall, on and after such date, be subject to the restrictions and obligations imposed [by the 1996 Act] and *shall not be subject to the restrictions and the obligations imposed by such Consent Decree[s].*") (emphasis added). Congress could have

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Instead of enacting the PLRA, Congress could have followed the model of the law upheld in *Wheeling Bridge* and simply declared prison operations not found to have violated a federal right to be lawful. Alternatively, Congress could have followed the model of the Telecommunications Act and changed the law and declared that state and local prisons "shall not be subject to the restrictions and obligations imposed by" decrees not entered in accordance with the new laws. Either of these laws would be much closer to "a self-executing legislative determination that a specific decree of a federal court ... must be set aside" than either the PLRA's limitations on prospective relief as a whole or the automatic stay in particular. Instead of providing the court with 30 or 90 days to reassess the injunction and keep it in place if justified, these laws would immediately free a prison system from some or all of the prior decree's requirements *without any judicial intervention*.

Rather than enacting laws of this sort, Congress took the much more moderate approach of directing the courts to apply the new standards. It reinforced this directive with the automatic stay, but only after the courts have had a reasonable time to rule. Since these other truly self-executing forms of the PLRA would not run afoul of *Plaut*, the much less self-executing version Congress actually enacted, including the automatic stay, does not do so either.

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[9] (...continued)
simply set out the new standards of the 1996 Act and left it to the courts to sort out the effect on existing consent decrees. The Courts of Appeals have had little difficulty concluding that, even though Congress instead chose to make its mandate clear by "connecting the dots," it did not thereby violate the separation of powers. *See BellSouth Corp. v. F.C.C.*, 162 F.3d 678, 692-93 (D.C. Cir. 1998), *cert. denied*, 119 S.Ct. 1495 (1999); *SBC Commun., Inc. v. F.C.C.*, 154 F.3d 226, 245-46 (5th Cir. 1998), *cert. denied*, 119 S.Ct. 889 (1999).

In sum, nothing in this Court's precedents limits Congress' ability to alter the prospective effect of pending injunctions when it simultaneously changes the law prospectively. To the contrary, this Court has recognized that this authority over pending injunctions is a necessary corollary of Congress' extensive power to legislate prospectively. Indeed, this Court has upheld this congressional power in circumstances that raised a far greater appearance of congressional meddling in the province of the judiciary. In *Wheeling Bridge*, this Court upheld Congress' effort to target a single injunction of this Court (not a lower court) and supersede it not with a new general standard, but with a legislative declaration limited to a single bridge. The PLRA, by contrast, changes the legal standard for granting injunctive relief in a whole class of cases without directing the outcome of any case. The PLRA raises far less difficulty under general principles than *Wheeling Bridge* and complies fully with the limits this Court laid down in *Plaut* and *Klein*.

2. *Federal Law Features Other Self-Executing Provisions with Far More Demanding Time Limits*

If (contrary to fact) the automatic stay violated the separation of powers because it is in some sense "self-executing," then other accepted provisions of federal law likewise would violate the Constitution. In particular, the self-executing time limits on TROs imposed by Fed. R. Civ. P. 65(b) and the Norris-LaGuardia Act, 29 U.S.C. § 107, place much more stringent time limits on prospective relief. Like the automatic stay, they suspend operation of a judicial order if additional findings are not made in a specified period of time.

Rule 65(b) allows a court to grant a TRO *ex parte* under certain circumstances. Under the rule, however, if the court takes no further action, the order expires in ten days. The court may extend the TRO, but only once, and only for an additional ten days. After that, if it wishes to maintain the effect of the order, it must enter a preliminary injunction, which requires the court to apply different, more demanding standards.

The Norris-LaGuardia Act's TRO provision operates the same way, but with an even more stringent time limit: five days with no extensions available. After five days, as with ordinary TROs, the court's only option is a preliminary injunction.[10] The Act also places special limits on preliminary injunctions in labor disputes. A court may not impose such relief until it has held a hearing, heard witness testimony in open court, and made detailed findings of fact. *See* 29 U.S.C. § 107(a)-(e).

The PLRA's automatic stay operates in similar fashion, although it provides courts with more time to act. Indeed, the specific problems the court of appeals assigned to the PLRA's automatic stay seem more likely to arise as a result of time limits on TROs. The court expressed concern that a defendant who wishes to obtain the benefit of an automatic stay need only stall discovery requests for 30 to 90 days

[10] In a 1942 decision not cited by the court below, the Seventh Circuit stated in dictum and without citation to authority that a district court may extend a TRO beyond the five-day limit set by § 107. *Toledo, P. & W. R.R. v. Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27*, 132 F.2d 265, 267 (7th Cir. 1942), *rev'd on other grounds*, 321 U.S. 50 (1944). This unsupported dictum has not been followed, and modern cases adhere to the plain terms of § 107. *See, e.g., In re Dist. No. 1-Pacific Coast Dist., Marine Engineers' Beneficial Ass'n*, 723 F.2d 70, 75 & n.3 (D.C. Cir. 1983); *Celotex Corp. v. Oil, Chemical and Atomic Workers Int'l Union*, 516 F.2d 242, 248 (3d Cir. 1975).

after making its motion to terminate. However, shorter time limits on TROs create an even greater risk. Nonetheless, this prospect troubles courts not at all because they have ample tools to deal with recalcitrant defendants. Nothing in the PLRA limits these tools.

The court of appeals expressed a related concern that a court might need more than 30 or even 90 days to resolve all the questions relevant to a motion to terminate.[11] This also fails to distinguish the TRO provisions. Undoubtedly, many issues relevant to the question whether to grant a preliminary injunction are difficult and time-consuming. Although a court might well desire more than the five- to 20-day life span of a TRO, it must make a determination within the deadlines.[12]

[11] The relative adequacy of five, 20, 30, 90, or 180 days seems like a more appropriate consideration for a Due Process analysis than for a separation of powers inquiry. *See* U.S. Pet. App. at 27a-28a (Easterbrook, J., dissenting). It may be that a five-day deadline is justified in the context of a TRO, but not for an automatic stay because the burdens on the party enjoined vary depending on the thoroughness of the initial proceeding imposing the injunction. But such balancing has no place in separation of powers analysis. Moreover, if five days is not sufficient, the result should be the same in state or federal court. At the extremes—requiring a stay absent a finding made in fifteen minutes or providing that judgments at law do not become final for twenty years— time limits may implicate the separation of powers, although even these extreme hypotheticals may be best analyzed under the Due Process Clauses. But absent such extreme hypotheticals, time limits properly belong in the due process calculus (which provides an antidote against absurd results), not in the separation of powers analysis.

[12] Indeed, in the context of prison litigation, the question whether to grant preliminary injunctive relief in the first instance likely will prove more complex and time-consuming than the question whether to retain a previously granted injunction, with which the court generally will be familiar. Nonetheless, Rule 65

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The time pressures governing labor dispute TROs are even more demanding, and section 107 requires the court to make specific findings before imposing a preliminary injunction, just as the PLRA requires specific findings in order to issue or maintain a prison conditions decree. There is no reason to believe that the inquiry demanded by the Norris-LaGuardia Act is any easier for the court to conduct than the one mandated by the PLRA. Nonetheless, the PLRA gives the court 1800% of the time afforded by the Norris-LaGuardia Act. Judicial experience demonstrates that courts can meet the deadlines imposed by Rule 65(b) and the Norris-LaGuardia Act. Time will prove that the PLRA's burdens are substantially less onerous. They certainly are no less constitutional.

The court of appeals argued that the TRO provisions differ from the PLRA's automatic stay in two respects: 1) the TRO provisions respond to the particular problems of *ex parte* proceedings; and 2) district courts retain the ability to enter a preliminary injunction that preserves the status quo beyond the time allowed by the TROs. Both arguments miss the mark. The court's first point is not true as to the Norris-LaGuardia Act's time limit, and the second point betrays a misunderstanding of the PLRA.

First, section 107's time limit applies to *all* labor-dispute TROs, not only those entered *ex parte*. Second, the PLRA's automatic stay no more prevents the court from entering a preliminary injunction imposing effectively the same relief as the suspended decree than Rule 65 or the Norris-LaGuardia Act prevents the court from entering a preliminary injunction imposing the same relief as the TRO. As

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[12] (...continued)
gives the court just 20 days to grant the preliminary injunction, while the PLRA provides a 90-day window to decide whether the retain the injunction.

noted earlier, nothing in the automatic stay provision prevents a court from entering a preliminary injunction to address a violation that is also subject to a stayed decree. To the contrary, the PLRA practically invites this course of action.

D. The Automatic Stay Does Not Violate the Separation of Powers Simply Because it Makes it More Difficult for Federal Courts to Supervise State and Local Prisons

In the end, there is nothing in Article III or the separation of powers that prohibits Congress from changing the law in ways that require the termination of existing decrees or from requiring the courts to address the ramifications of that change promptly. Likewise, nothing prevents Congress from asking the courts to ensure that injunctive relief remains justified after the passage of time. If there are any limits on the extent to which Congress may accomplish these objectives, the PLRA does not violate them. Unlike the provision upheld in *Wheeling Bridge*, the PLRA affects an entire class of orders. Unlike the five-day time limit of the Norris-Laguardia Act, the PLRA gives courts 90 days to consider a motion to terminate.

This is not to say that the PLRA makes it convenient for federal courts to enter injunctive orders governing state and local prisons. To do so, the court must go out of its way to ensure that the order is narrowly tailored to address an actual violation of federal law. The court must then give priority in its docket over time to ensuring that the injunction remains fully justified. This is as Congress intended, and as it should be. Federal court supervision of state and local prisons puts unique strains on our system of federalism. The role of federal courts in overseeing these institutions is properly limited. The PLRA

balances the benefits of federal court intervention to protect federal rights with the costs of federal intervention in an area of traditional state concern. Nothing in Article III or the separation of powers prevents Congress from striking that balance.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

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